



## **ADMINISTRATION OF ESTATES**

### **WHAT STEPS SHOULD I TAKE BEFORE SEEING A SOLICITOR?**

You may well find that it is helpful to have a brief initial consultation with us before taking any steps to administer the estate and it is important to establish that you are one of the appropriate people to deal with the administration, that is that you are one of the Executors appointed by the deceased's Will or their next of kin if there is no Will.

Furthermore, if you have any reason to believe that the debts of the estate will exceed the assets, then the safest course is to consult us immediately to avoid "intermeddling" in the estate which carries the possible risk of making yourself personally liable for the debts of the estate.

We are aware of the problems which may arise immediately following a death and will normally be prepared to give you outline advice on the telephone or arrange a first appointment very swiftly if necessary.

You should however consider dealing with the following matters:-

- Register the death.
- Check the whereabouts of the Will and the identity of the Executors. The Will may also contain special provisions concerning the funeral or burial.
- Make funeral arrangements if you are the appropriate person to do so.
- Trace the household insurance policy and, if the property is vacant following death, notify the insurers of this, emphasising that the policy is not to be cancelled. It is not necessary to notify insurers immediately, but this should usually be done within 30 days of death.
- Trace the deceased's motor insurance policy (if any) and notify the insurers as soon as possible. If the deceased's car is to be used by other relatives, the insurance should be transferred if possible. The deceased's car should not be used by any other person until the insurance position is clear as otherwise an offence is committed.
- Consider removing valuables to a place of safety.
- Consider draining down the water system if the property is vacant during winter months.
- Trace as much paperwork as possible relating to the assets and debts of the estate, for instance Bank and Building Society Accounts, Shares, Insurance Policies, National Savings Certificates, Premium Savings Bonds and other National Savings products, and Personal Equity Plans. Details of Pension entitlements and the deceased's Income Tax position should also be traced if possible. If a Pension Order Book is returned to the Department of Social Security, you should keep a note of the reference number, branch address and weekly amount.

### **WHAT IS INVOLVED IN THE ADMINISTRATION OF AN ESTATE?**

Administering an estate involves dealing with all the property, investments and other assets of the person who has died and settling all their debts, including Income Tax liabilities, and then distributing the estate between the beneficiaries entitled under the deceased's Will or the Intestacy Rules.

If the estate exceeds a certain sum, known as the Nil Rate Band, there may also be Inheritance Tax payable, subject to a variety of Tax Reliefs. Estates falling within the Nil Rate Band may also be taxable if the deceased made lifetime gifts or settlements, or was a beneficiary under a trust or settlement.

The most important form of tax relief is the complete exemption from Inheritance Tax between husbands and wives and between civil partners, but there are also highly beneficial, but complex rules providing Tax Relief on business property and agricultural property. Charitable gifts are also exempt from Inheritance Tax.

If the person who has died has left a Will; this is proved by the Executors and a Grant of Probate is obtained. If there is no Will, the deceased is said to have died "Intestate" and his or her estate is distributed in accordance with statutory rules. In such cases a Grant of Letters of Administration is obtained, normally by a close relative.

If an estate is incorrectly administered or if the money is distributed before all the debts have been discovered and settled, the Executors or Personal Representatives may be made personally liable, but we can advise you on how these risks may be avoided.

#### **IS IT ALWAYS NECESSARY TO OBTAIN A GRANT OF PROBATE OR LETTERS OF ADMINISTRATION?**

No. It is often the case that husbands and wives or civil partners hold their assets jointly and in such cases the survivor of them may take over the jointly- owned assets upon production of the Death Certificate. However, even in such cases, it may be helpful to consult us for general advice first or to deal with any minor assets which are not in joint names.

Similarly, it may still be necessary to settle the Income Tax of the person who has died. In many cases it is not necessary to obtain a Grant of Probate or Letters of Administration where the estate does not exceed £5,000.00, but even so if there are a number of small assets totalling less than £5,000.00, it may still be swifter and more convenient to obtain a Grant.

#### **WHAT ABOUT PENSION FUNDS?**

In many cases there will be a lump sum payable on the death of a Pensioner or a death in service benefit payable upon the death of a Pension Fund member who has not yet retired. The precise details will depend on the terms of the deceased's Pension Fund, details of which can be obtained from the Employer's Pension Fund Trustees or Personnel Department.

Quite often these lump sum payments are made in the discretion of the Pension Fund Trustees which means that they do not form part of the estate for Probate purposes nor for Inheritance Tax purposes and in such cases the Pension Fund Trustees have an unfettered discretion as to how the sum due is distributed, although they will almost always comply with any written wishes left by the deceased.

#### **CAN INHERITANCE TAX BE AVOIDED OR REDUCED?**

Yes. If the provisions of a Will or the effects of the Intestacy Rules (where the deceased has left no Will) are not tax efficient it is possible under present law to vary the terms of the Will or Intestacy within two years of the date of death so as to achieve either a more tax efficient result or a result more in accordance with the family's wishes. These Deed. of Variation are technical and complex, but can be a very effective "post mortem" tax planning exercise.

However, the most effective steps to reduce or avoid Inheritance Tax can be taken during your lifetime by making use of various Tax Reliefs and Exemptions relating to lifetime gifts, by writing insurance policies in trust, by ensuring that advantage is taken of Discretionary Pension Fund arrangements as mentioned above and, most important of all, by making a Will in appropriate term, taking Inheritance Tax into account. This firm also provides a full Will Drafting and Tax Planning Service - see "**Making a Will**".

#### **WHY SHOULD I INSTRUCT A SOLICITOR?**

The burden of administering an estate and complying with all the legal requirements can be a very daunting task for anybody, particularly at a distressing time following the death of a close relative.

At your initial meeting with us we will discuss what needs to be done and which aspect you would like help with.

The specialist Private Client Department at Thomas Flavell and Sons has considerable experience in dealing with these matters and they will be able to guide and assist you on all the different aspects of administering an estate, to whatever extent you require.

We will advise you whether or not you require a- Grant of Probate or Letters of Administration and explain the duties and responsibilities of Executors and Administrators.

We will be able to assist you in dealing- with the finalisation of the deceased's Income Tax affairs and advise you upon any Inheritance Tax or Capital Gains Tax liability of the estate and we will act on your behalf in negotiating all tax matters with the Inland Revenue.

In appropriate cases we may also be able to advise you on methods of reducing the Inheritance Tax liability of the estate by re- arranging the estate, as referred to above.

#### **HOW LONG WILL IT TAKE?**

The length of time taken to obtain a Grant of Probate or Letters of Administration and administering an estate varies enormously, depending upon the value and complexity of the estate, the number of beneficiaries, any Trusts included in the Will or as a result of Intestacy and whether or not the estate is subject to tax.

It is possible to deal with the simplest estates within 10 to 12 weeks of first instructing us and in cases where there is an urgent necessity to obtain the Grant of Probate or Letters of Administration it is possible to deal with this and have access to funds within a few weeks. However, the administration of more complex estates can take much longer.

#### **WHAT WILL IT COST?**

Some types of work undertaken may be dealt with on a fixed fee basis and others will be charged by reference to an hourly rate. When dealing with the administration of an estate there will normally also be an additional charge or "value element" based upon a percentage of the value of the estate.

At your initial meeting with us we will be able to give you an idea of the costs involved before the work is undertaken.